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No. 90-971

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1990

AVESTA AB and AVESTA STAINLESS, INC.,

Petitioners,

v.

THE UNITED STATES, ALLEGHENY LUDLUM STEEL CORPORATION, ARMCO INC., JESSOP STEEL CORPORATION, J&L SPECIALTY PRODUCTS COMPANY, WASHINGTON STEEL CORPORATION, AND THE UNITED STEELWORKERS OF AMERICA (AFL-CIO/CLC),

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

BRIEF IN OPPOSITION BY RESPONDENTS ALLEGHENY LUDLUM STEEL CORPORATION, ARMCO INC., JESSOP STEEL CORPORATION, J&L SPECIALTY PRODUCTS COMPANY, WASHINGTON STEEL CORPORATION, AND THE UNITED STEELWORKERS OF AMERICA (AFL-CIO/CLC)

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January 14, 1991

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QUESTIONS PRESENTED

1. Whether the United States International Trade Commission, as affirmed by the United States Court of International Trade and the United States Court of Appeals for the Federal Circuit, concluded in accordance with law that the petitioners had not shown changed circumstances sufficient to warrant a review of an earlier, affirmative determination by the United States Tariff Commission that dumped imports of stainless steel plate from Sweden were injuring the United States domestic industry engaged in the production of stainless steel plate.

2. Whether the United States International Trade Commission, having thoroughly studied the petitioners' allegations of changed circumstances and evidence submitted by the United States domestic industry, abused its discretion or acted arbitrarily or capriciously by resolving in a reasoned, clearly explained decision that the petitioners had not demonstrated changed circumstances sufficient to warrant the requested review.

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The respondents Allegheny Ludlum Steel Corporation, Armco Inc., Jessop Steel Corporation, J&L Specialty Products Company, Washington Steel Corporation, and

The United Steelworkers of America (AFL-CIO/CLC) respectfully request that this Court deny the petition for a writ of certiorari to review the opinion by the Court of Appeals for the Federal Circuit in this case.[1] That opinion is reported at 914 F.2d 233.

STATEMENT OF THE CASE

A. The 1973 Swedish Plate Finding of Dumping

On May 1, 1973, the United States Tariff Commission (subsequently renamed the United States International Trade Commission) ("Commission") determined that an industry in the United States was being injured within the meaning of the Antidumping Act of 1921 (19 U.S.C. §§ 160 *et seq.* (1921)), *repealed by* the Trade Agreements Act of 1979, Pub. L. No. 96-39, Title I, 93 Stat. 144 (1979), by reason of imports of stainless steel plate from Sweden that the Secretary of the Treasury had advised the Commission were being, or were likely to be, sold at less than fair value (Pet. App. 43a-48a).

In its determination, the Commission documented a sharp increase in imports of stainless steel plate from Sweden between 1970 and 1972, both in absolute volumes and as a percentage of apparent United States consumption, and noted that the dumped Swedish sales had prevented United States producers' prices from increasing in

[1] Jessop Steel Corporation is a subsidiary of Aphlone Industries, Inc. The respondents have no other parent or subsidiary companies to list in accordance with Rule 29.1 of this Court.

proportion to increased costs of domestic production. The Commission also observed that, despite the greatly increased Swedish exports to the United States, there was considerable room for the expansion of these exports through alteration of market priorities and increased production. In this connection, the Commission stated that a principal reason for increased Swedish concentration on the United States market was a decline in demand for stainless steel plate from Western Europe, Sweden's largest market. After finding a clear relation between sales lost by United States producers and the imports at less than fair value from Sweden, the Commission cited an over-all decline in the major United States producers' profits and returns on investment and attributed the continued low level of profits during 1972 to rising production costs coupled with abnormally low domestic prices caused by the dumped sales of Swedish stainless steel plate (Pet. App. 45a-48a).

As the result of the affirmative determinations of sales at less than fair value and injury, the Secretary of the Treasury issued a finding of dumping with respect to stainless steel plate from Sweden on June 5, 1973 (Pet. App. 41a-42a). This finding has continued in effect to the present.

B. The 1985 Petition For A Changed Circumstances Review

On July 8, 1985, the petitioners filed their first request with the Commission for a review of the 1973 finding under section 751(b)(1) of the Tariff Act of 1930,

as amended (19 U.S.C. § 1675(b)(1) (1982)). The Commission determined that the petitioners had not established changed circumstances sufficient to warrant a review (50 Fed. Reg. 43,613 (Oct. 28, 1985)), and on appeal by the petitioners the United States Court of International Trade sustained the Commission's determination. *Avesta AB v. United States*, 12 CIT ___, 689 F. Supp. 1173 (1988) (hereinafter *Avesta I*). The petitioners did not appeal *Avesta I* further to the United States Court of Appeals.

In denying the petitioners a review in *Avesta I*, the Commission addressed in turn and rejected each of the alleged changed circumstances raised by the petitioners. First, the petitioners' purchase of a plate mill in Indiana during 1976 was deemed an inadequate basis for review, primarily because imports of stainless steel plate from Sweden were found to have increased between 1983 and 1984 and not to have been deemphasized, as asserted by the petitioners, under an alternative marketing strategy of direct investment in the United States. Second, in response to the petitioners' argument that the imports from Sweden were *de minimis* and commercially insignificant, the Commission concluded that the petitioners had offered no persuasive reason why the drop in volume was the result of anything other than the intended import relief. Third, as to the consolidation of the stainless steel plate industry in Sweden from four producers with four mills in 1972 to one producer with two mills in 1985, the Commission found that the consolidation would not necessarily lead to a decline in exports to the United States. Fourth, the petitioners' calculations of an asserted increase in Swedish exports of stainless steel plate to Western Europe were discovered by the Commission to

be seriously skewed; the Commission found instead that these exports during the early 1980's were actually below the levels of the early 1970's. 50 Fed. Reg. at 43,614.

In *Avesta I*, the Court of International Trade upheld the Commission, holding that the Commission's decision was not arbitrary, capricious, or an abuse of discretion and was otherwise in accordance with law. In addition to affirming the Commission's reasoning in rejecting the petitioners' alleged changed circumstances, the court addressed the legal standard applicable in a preliminary changed circumstances determination and the petitioners' contention that the Commission should have conducted a hearing before deciding the issue of whether there were changed circumstances sufficient to warrant a review.

With respect to the governing legal standard, the court examined the history and regulatory framework behind 19 U.S.C. § 1675(b)(1) and relevant judicial precedent. The court concluded that Congress intended the review process to be undertaken by the Commission on a case-by-case basis, with reviews to be conducted by the Commission after it had weighed conflicting as well as affirmative evidence and only when it reasonably appeared from positive evidence that there were changed circumstances sufficient to warrant a review. 12 CIT ___, 689 F. Supp. at 1178-1181.

With regard to whether a hearing was mandated at this preliminary stage of the changed circumstances inquiry, the court held the Commission's procedure of notice and comment to be adequate. The court observed that no requirement for a hearing is expressly stated or can fairly be implied from the statute. The court stressed

that antidumping proceedings are investigative rather than adjudicatory in nature and that an agency need not make available in an investigative proceeding the rights of apprisal, cross-examination, and confrontation that are afforded by a hearing in an adjudicatory proceeding. 12 CIT ___, 689 F. Supp. at 1188-1191.

C. The 1987 Petition For A Changed Circumstances Review

On February 25, 1987, the petitioners commenced a second, somewhat modified request that the Commission carry out a changed circumstances review under 19 U.S.C. § 1675(b)(1) (Supp. V 1987). This petition also was denied by the Commission (Pet. App. 31a-40a). The United States Court of International Trade (Pet. App. 12a-30a) and Court of Appeals for the Federal Circuit (Pet. App. 1a-10a) thereafter affirmed the Commission's determination, thus leading to the present petition for a writ of certiorari (hereinafter *Avesta II*).

Both lower courts in *Avesta II* approved the holding of the Court of International Trade in *Avesta I* that what constitutes a change in circumstances sufficient to warrant a review is a matter that Congress has delegated to the Commission for resolution on a case-by-case or *ad hoc* basis. As had the trial-level court in *Avesta I*, the Court of Appeals for the Federal Circuit in *Avesta II* canvassed the legislative history and discernible congressional intent and concluded that Congress intended that the Commission should continue its longstanding practice of determining each case individually without statutory

guidelines other than that changed circumstances sufficient to warrant a review must be present in the Commission's reasoned judgment. The Court of Appeals for the Federal Circuit saw no basis for the petitioners' position that 19 U.S.C. § 1675(b)(1) should be judicially amended and interpreted to require a review upon the showing of "a reasonable appearance" of changed circumstances. The court observed that its understanding of the broad discretion given by Congress to the Commission over whether a changed circumstances review should be conducted was reinforced by Congress' direction that there be only limited judicial review of the Commission's determinations under sections 516A(a)(1)(B) and (b)(1)(A) of the Tariff Act of 1930, as amended (19 U.S.C. §§ 1516a(a)(1)(B) and (b)(1)(A) (1982 & Supp. V 1987)) (Pet. App. 5a-9a).

Both lower courts in *Avesta II* addressed in detail each of the alleged changed circumstances raised by the petitioners as the grounds for a review and found them inadequate. In adopting the examination and reasoning of the Court of International Trade as its own, the Court of Appeals for the Federal Circuit summarized the alleged changed circumstances as being either the expected and direct result of the imposed import relief, unsupported by the record, or not significantly connected to the impact of dumped Swedish stainless steel plate on the United States domestic industry (Pet. App. 9a).

In particular, the lower courts concluded in agreement with the Commission that any decline in the imports from Sweden was an expected result from the imposition of the antidumping order and had not been shown to be due to the petitioners' acquisition of the plate mill in Indiana; that the petitioners' monopolization

of the Swedish industry producing stainless steel plate left enough capacity to enable the petitioners to dump stainless steel plate in the United States while still satisfying the market in Sweden and other foreign markets; that the petitioners' exports of stainless steel plate to the European Community in fact had not increased as the petitioners represented; that the existence of Voluntary Restraint Agreements by the United States on steel products with a variety of countries apart from Sweden left the petitioners free to continue the exportation of stainless steel plate from Sweden to the United States in whatever quantities they chose and did not mean that the domestic United States industry was any less vulnerable to the impact of dumped imports; and, lastly, that with one insignificant exception, allegedly different and patented types of Swedish stainless steel plate were products "like" those covered by the antidumping order within the antidumping law's meaning and were therefore neither factually nor legally entitled to exclusion from the order on Swedish stainless steel plate (Pet. App. 9a-10a, 18a-30a).

SUMMARY OF THE ARGUMENT WHY THE WRIT SHOULD BE DENIED

The Commission and the courts below have exhaustively considered and rightly rejected in *Avesta I* and *Avesta II* the two issues brought by the petitioners to this Court. Neither issue merits the granting of a writ of certiorari.

The court of appeals correctly construed the legal standard under which the Commission has been

instructed by Congress to operate in deciding whether an antidumping order should be terminated or modified in light of changed circumstances. Consistent with the Antidumping Code of the General Agreement on Tariffs and Trade and with 19 U.S.C. § 1675(b)(1) and its relevant legislative history, the Commission is charged in the first instance to determine in its discretion whether sufficient changed circumstances exist to warrant a review. Congress wisely left this task to the Commission to resolve with its expertise on a case-by-case basis and without any further statutory guidelines. Congress intended that a review be conducted only if it reasonably appears to the Commission that there are changed circumstances sufficient to warrant a review.

With specific regard to the petition for a review of the dumping finding against imports of stainless steel plate from Sweden, the Commission reasonably decided that the petitioners had not demonstrated sufficient changed circumstances to warrant a review. The petitioners' alleged changed circumstances have been scrutinized by the Commission, the trial-level court, and the court of appeals and consistently found to be insufficient to warrant a review. The underlying reasoning of the Commission and courts below is not arbitrary, capricious, or an abuse of discretion. The petitioners have had ample opportunity to be heard on their alleged changed circumstances. An additional review by this Court is unnecessary.

ARGUMENT

I. THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THE GOVERNING LEGAL STANDARD ESTABLISHED BY CONGRESS WAS FAITHFULLY APPLIED BY THE INTERNATIONAL TRADE COMMISSION AND PROPERLY AFFIRMED BY THE COURT OF APPEALS IN REJECTING THE PETITIONERS' REQUEST FOR A CHANGED CIRCUMSTANCES REVIEW

The petitioners suggest that 19 U.S.C. § 1675(b)(1) prohibits the Commission from weighing conflicting evidence or reaching a conclusion on "ultimate facts" when determining the threshold question of whether there are sufficient changed circumstances to warrant a review of an antidumping order. According to the petitioners, such activity is reserved for a review itself, including a hearing, if requested, and imposes an excessive standard of persuasion upon petitioners when undertaken by the Commission at the initial stage of a changed circumstances inquiry (Pet. 22). By inference, the petitioners seem to be asserting that the Commission is bound by the statute automatically to accept as sufficient a petitioner's allegations of changed circumstances for the purpose of commencing a review and holding a formal hearing.

In renewing these contentions, the petitioners have misread the congressional intent and are wrongly attempting to create statutory restrictions that Congress deliberately chose not to impose on the Commission. These restrictions effectively would ensure a changed circumstances review whenever sought by a petitioner, contrary to Congress's clear purpose of empowering the Commission with discretion to withhold a review in the

absence of sufficient changed circumstances. As the court of appeals concluded, this will of Congress is manifested both by the language of 19 U.S.C. § 1675(b)(1) and by the legislative background that led to this provision's enactment.

In the Customs Simplification Act of 1954, Pub. L. No. 83-768, § 301, 68 Stat. 1136, 1138 (1954), the United States Tariff Commission was assigned responsibility for conducting injury investigations under the Antidumping Act of 1921. At least by the 1970's, the Commission had begun to entertain requests for review of outstanding antidumping orders to determine whether changed circumstances existed that were sufficient to justify the termination or modification of such orders. *See, e.g.*, Primary Lead Metal from Australia and Canada, Inv. Nos. AA 1921-134A and 135A, USITC Pub. 772 (April 1976); and Northern Bleached Hardwood Kraft Pulp from Canada, Inv. No. AA 1921-105A, USITC Pub. 687 (Sept. 1974).

These earlier reviews were carried out by the Commission without any express statutory authorization such as that contained in 19 U.S.C. § 1675(b)(1). The idea of amending the Antidumping Act of 1921 to have such a provision was broached and rejected in 1974. In the Senate Finance Committee's words,

> The Committee received proposals to *include statutory language regarding* certain concepts and terms, such as . . . *reconsideration of agency determinations and findings,* embodied in the Antidumping Act. These proposals were not accepted for the reason that *the Committee believes the matters involved are adequately treated*

under existing practices and are best left to individual case determinations without additional statutory guidelines.

* * *

(4) *Review of agency determinations and findings.* – The Antidumping Act does not contain specific provisions for the review by each agency of its individual determinations or of the findings of dumping issued by Treasury. *However, both Treasury and the Commission have the authority to review, modify, or revoke their determinations.* The Treasury by regulation has long exercised this function, initially and until 1954, with respect to both less-than-fair-value and injury determinations, and after 1954 with respect to its single determinations of less-than-fair-value imports. *In 1954, the Commission was given the authority to make the injury determinations under the Antidumping Act, and it has continued Treasury's practice as is recently evidenced by its review of several outstanding injury determinations, one of which was an inherent part of an outstanding finding of dumping issued by the Treasury.*

S. Rep. No. 1298, 93d Cong., 2d Sess. 178-179, 181 (1974) (emphasis added).

In 1977, the Commission incorporated the review procedure it had been following in its regulations.

(c) *Institution of investigation.* The Commission *may institute* an investigation for the purposes of § 207.5(a) upon receipt of an application from an interested person, upon its own motion, or upon receipt from the Secretary of the Treasury of appropriate advice concerning an application from an interested person *specifying the changed circumstances forming the basis for review.* . . .

19 C.F.R. § 207.5(c) (1978) (emphasis added).

It was in this posture that Congress found the situation when it repealed the Antidumping Act of 1921 in 1979 and created section 751(b)(1) of the Tariff Act of 1930, as amended, by way of the Trade Agreements Act of 1979, Pub. L. No. 96-39, Title I, § 101, 93 Stat. 144, 175 (1979). The Trade Agreements Act of 1979 approved and implemented, as relevant, the Antidumping Code of 1979 that was agreed to in the Tokyo Round negotiations of the General Agreement on Tariffs and Trade. (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, *opened for signature*, Apr. 12, 1979, 31 U.S.T. 4919, T.I.A.S. No. 9650 (entered into force Jan. 1, 1980) (hereinafter "Antidumping Code")). In keeping with this legislation's purpose, 19 U.S.C. § 1675(b)(1) was drafted to execute fully and consistently into United States domestic law Article 9 of the Antidumping Code. *See* Statement of Administrative Action, H.R. Doc. No. 96-153, Part II, 96th Cong., 1st Sess. 392, 429 (1979). Thus, paragraph 2 of Article 9 of the Antidumping Code calls for review of the need for the continued imposition of antidumping duties, *"where warranted,* . . . if any interested party so requests and submits positive information substantiating the need for review." Antidumping Code, 31 U.S.T. at 3933 (emphasis added). Section 1675(b)(1) accordingly instructs the Commission to conduct a review if it receives information "which shows changed circumstances *sufficient to warrant* a review. . . . " (Emphasis added.)

The passage of 19 U.S.C. § 1675(b)(1) was accomplished with congressional awareness and approval of the Commission's case-by-case treatment of changed circumstances petitions and with a harmony between

United States law and the Antidumping Code. In the legislative reports accompanying section 751(b)(1), Congress stated, "The . . . Commission would initiate reviews under this provision *only if* . . . *satisfied* that 'changed circumstances' sufficient to warrant the review exist." S. Rep. No. 249, 96th Cong., 1st Sess. 80 (1979); H.R. Rep. No. 317, 96th Cong., 1st Sess. 72 (1979) (emphasis added). Once section 751(b)(1) had been promulgated, the Commission revised its regulations slightly to mirror the phrase, "changed circumstances sufficient to warrant a review of such determination," found in section 751(b)(1). *See* 19 C.F.R. § 207.45 (1982).

Since 1979, Congress has amended the antidumping and countervailing duty laws via two major pieces of legislation, the Trade and Tariff Act of 1984, Pub. L. No. 98-573, 98 Stat. 2948 (1984), and the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988). Although, as is discussed below, Congress did modify section 751(b)(1) in one important respect in 1984, the provision has otherwise stood unchanged since 1979. In particular, the language, "changed circumstances sufficient to warrant a review," has been left untouched. During this time, the Commission has remained steadfast in its adherence to deciding in each instance whether the changed circumstances alleged have been adequate to trigger a review under section 751(b)(1). *See, e.g.*, Birch Three-Ply Door Skins from Japan, Inv. No. 751-TA-6, USITC Pub. 1271 (July 1982); Salmon Gill Fish Netting of Manmade Fibers from Japan, Inv. No. 751-TA-5, USITC Pub. 1234 (March 1982).

This legislative history and the language of 19 U.S.C. § 1675(b)(1) itself make clear that Congress wanted the

Commission to continue the agency's practice of deciding each case for review on its own and to institute a review only when satisfied that changed circumstances sufficient to warrant a review were first demonstrated. The petitioners' claim that the Commission is precluded at this juncture from weighing conflicting evidence and then rendering a determination is directly contradicted by Congress's expressed intent. The petitioners' approach would unjustifiably and illogically circumscribe the Commission's exercise of judgment and guarantee a review when Congress instead conditioned a review upon an initial determination by the Commission that sufficient changed circumstances warrant a review. In reposing this discretion in the Commission, Congress properly implemented the Antidumping Code's provision that a review of the need for continued antidumping duties is to be made "where warranted" if positive information is submitted substantiating the need for review. Antidumping Code, 31 U.S.T. at 4933.

The petitioners are likewise in error in asserting that Congress incorporated a low standard for a changed circumstances review when it amended section 751(b)(1) in the Trade and Tariff Act of 1984. That amendment stipulated that *during an investigation* the party seeking revocation of an antidumping order has the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant *revocation* of the order. The petitioners construe this amendment to mean that Congress "must have intended a lower level of persuasion to apply at the initial stage. To impose a 'burden' of persuading the Commission at the outset that there are

changed circumstances warranting revocation would make the subsequent investigation superfluous." (Pet. 16.)

The court of appeals acknowledged this argument (Pet. App. 6a) and correctly dismissed it, noting that Congress's detailed amendments to section 751(b)(1) in 1984 left untouched the *ad hoc* nature of the Commission's determinations to institute a changed circumstances review (Pet. App. 7a-8a). Congress in 1984 could have modified its standard for a review in any number of ways, such as by predicating a review upon a "reasonable indication" or "reasonable appearance" of changed circumstances, but, as the court of appeals recognized, Congress did not do so (Pet. App. 8a).

The evidence submitted with a request for review may or may not be persuasive on the issue of revocation, *see Matsushita Electric Industrial Co., Ltd. v. United States*, 750 F.2d 927, 932, 3 Fed. Cir. (T) 44 (1984), but a review investigation does not commence on a clean slate. "A foreign manufacturer, after all, is subject to an antidumping order because it was previously found to have engaged in injurious dumping. For that reason, a section 751 review does not begin from an entirely neutral starting point." H. Conf. Rep. No. 1156, 98th Cong., 2d Sess. 182 (1984). In addition, changed circumstances reviews must be conducted on the assumption that dumping will resume if an antidumping order is revoked or cancelled, *see American Permac, Inc. v. United States*, 831 F.2d 269, 274 (Fed. Cir. 1987), *cert. dismissed*, 485 U.S. 901 (1988). This assumption of dumping is particularly justified in the petitioners' circumstances, because the last administrative review by the United States Department of Commerce of the antidumping order against stainless steel

plate from Sweden revealed continued dumping. 49 Fed. Reg. 39,885-86 (Oct. 11, 1984). More recently, the Department of Commerce determined not to revoke this antidumping finding. 55 Fed. Reg. 36,680-81 (Sept. 6, 1990).

In summary, the 1984 amendment to section 751(b)(1) did not disturb the Commission's discretion to determine on an *ad hoc* basis whether there are sufficient changed circumstances to warrant a review, but simply directed statutorily that throughout a changed circumstances investigation, from the filing of a petition forward, the burden of persuasion falls upon the petitioners. While this burden at the initial stage does not demand that the party desiring a review establish that the crucial factors underlying the original determination of injury no longer hold true, *see Avesta AB v. United States*, 12 CIT ___, 689 F. Supp. at 1181 ("since the application of such a burden would eliminate the need for a review investigation once the decision to undertake one has been made"), the evidence that favors a party seeking revocation must be sufficiently strong in the Commission's judgment to warrant a review. The petitioners simply have failed to muster sufficiently convincing evidence.

II. THE DETERMINATION AGAINST REVIEW OF THE SWEDISH PLATE DUMPING FINDING IS JUSTIFIED ON THE MERITS, SO THAT A WRIT OF CERTIORARI IS UNCALLED FOR AND INAPPROPRIATE

The petitioners claim in general terms that the Commission acted arbitrarily and capriciously by not initiating a review of the Swedish plate dumping finding.

According to the petitioners, their alleged changed circumstances were "obviously sufficient" to require a review and "on their face" showed dramatic changes in the petitioners' import behavior. The petitioners argue broadly that the determination against a changed circumstances review "lacks a rational basis in fact . . . " (Pet. 25).

These assertions by the petitioners are groundless and amount to a request that this Court analyze again the evidentiary record compiled in *Avesta II* that has already been examined by the Commission, the trial-level court, and the court of appeals. To the extent that the arguments raised by the petitioners in *Avesta II* were also raised in *Avesta I*, the common facts involved have been studied on five occasions in slightly more than five years. In every instance, the alleged changed circumstances have been found insufficient to warrant a review only after a thorough evaluation of the evidence. Each of the successive determinations, including that of the court of appeals, has articulated in a reasoned and reasonable fashion the rationales for concluding that the alleged changed circumstances were insufficient to warrant a review.

A writ of certiorari ordinarily will not be granted for the purpose of reviewing evidence and discussing specific facts. *United States v. Johnston*, 268 U.S. 220, 227 (1925). No cause exists to depart from this practice in this case, especially given that the court of appeals concurred with the trial-level court in supporting the findings of fact made by the Commission. Notably lacking in the petition is any attempt by the petitioners to identify precisely why and how the various subsidiary findings of the Commission and the courts below could constitute an

abuse of discretion. If the petitioners could point to egregious errors, any such errors should have been documented exactly in the petition.

In fact, contrary to the petition, the point-by-point treatment in the courts and agency below of the petitioners' alleged changed circumstances reasonably substantiates the determination that there was inadequate positive evidence to initiate a review. Having been able to submit to the Commission whatever views and evidence they wished in their petitions for a changed circumstances review, the petitioners have only themselves to blame for any deficiencies in the sufficiency of their presentations.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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